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Innovative Financial Disclosures

All About Advertising Law Blog

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Do you represent twenty-first century clients that offer consumer financial products or services? Perhaps their offerings are available online and via mobile. Or perhaps your clients have been around for decades and prefer traditional modes of conducting business but have begun to realize that they may need a makeover to be appealing to the Millennials. Maybe they would like to be more agile, but have found that the disclosure requirements of various laws and regulations (e.g., Truth in Lending Act/Regulation Z, Electronic Funds Transfer Act/Regulation E, Gramm-Leach-Bliley Act/Regulation P) hamper their style and the delivery of their message. As their attorney, what are your options? In the past, you might have focused on counseling your clients on how to use the model forms found in those regulations for required disclosures. Now you have a new option—advising and assisting them with the development of trial disclosures that comport with the Consumer Financial Protection Bureau's ("CFPB") newly finalized ***Policy to Encourage Trial Disclosure Programs*** ("Policy").

The Policy is intended to "facilitate access and innovation" in the "markets for consumer financial products and services." The Policy recognizes that innovative companies are a rich resource that may be well-positioned to improve upon current regulatory requirements by developing disclosures that more accurately and effectively help consumers understand the costs, benefits, and risks of various consumer financial products and services.

How does the Policy work? By providing companies with a safe harbor or "waiver" to test new disclosures on a trial basis. If a company's proposed disclosures are approved by the CFPB, during the testing period, the company will be deemed to be in compliance with or exempt from the relevant federal disclosure requirements.

Proposals may include: (1) innovative disclosures (e.g., disclosure content, format); and/or (2) innovative ways of delivering disclosures (e.g., means of disclosure delivery). These proposals may be submitted by individual companies or groups of entities working together, but only those companies specifically approved by the CFPB are permitted to test the disclosures in lieu of complying with existing requirements.

The Policy provides us with insight into how the CFPB intends to regulate as a twenty-first century agency. The CFPB has already shown an inclination to promote innovation in the marketplace through the launch of its Project Catalyst, the agency's initiative to support innovation in the creation of consumer-friendly financial products and services. This Policy is a core part of that initiative. The CFPB intends to use data from the trial disclosure programs to determine whether proposed innovations improve upon existing requirements. Such data may inform future disclosure rulemakings of the CFPB.